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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/629,368 07/31/00 BABINSKI

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IM22/0620

EXAMINER

ELHILO, E

ART UNIT

PAPER NUMBER

1751

DATE MAILED:

06/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/629,368

Applicant(s)

BABINSKI ET AL.

Examiner

Eisa B Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.

- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

Claims 1-33 are pending in this application.

### DETAILED ACTION

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2, 4, 9 and 15 are indefinite because the claims recite the limitation "greater than about" It is unclear what is the value of the C log P exactly. The specification does not provide any guidance.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 133 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nogami et al. (WO Patent No. 98/56337).

Nogami (WO' P 337) teaches aqueous malodor reducing composition (see page 1, lines 9-17). This composition comprises, from about 0.0001 % to about 1% by weight of fragrance materials such as amber and musk (see page 8, lines 7-10) having C log P of not less than 3.5. (see page 7, line 5), from about 0.1% to 35% surfactants such as nonionic, and/or anionic and/or cationic and/or ampholytic (see 8, lines 14-16), diethylene glycol as non-volatile organic compound (see page 20, line 16), alcohol ethoxylates (see page 11, line 16), metal salts such as copper and zink salts as odor absorbers as well as other adjunct odor-controlling materials,

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antistatic and insect and moth repelling agents (see page 25, lines 3-7), buffering agents such as succinic and citric acids and their sodium salts (see page 27, lines 9-13), solvents such as ether derivatives of mono-, di- and tri-ethylene glycol (see page 28, lines 34-35) and water as a balance carrier (see page 19, lines 16-25). Nogami also teaches a method for using aqueous malodor reducing composition. The method comprises the step of applying of the composition to the fabrics, households or skin (see page 59, lines 33-35 and page 60, lines 1-11). The compositions have pH 4 (see page 64, Examples I-III).

The reference differs from the instant claims by employing perfume ingredients and surfactants with overlapping percentages and similar properties to those claimed. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ any percentage range of perfumes and surfactants since these ranges are overlapping with the range taught by the reference, because an ordinary person would have the reasonable expectation that any range of percentages within the limits would give compositions with similar properties as those claimed, absent unexpected results.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 305-7718 for regular communications and (703) 305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

EE

Eisa

June 18, 2001

Mark

**Mark Kopec**  
**Primary Examiner**